No. 83-870

In The Supreme Court of the United States

OCTOBER TERM, 1983

STATE OF CONNECTICUT, WILLIAM A. O'NEILL, in his official capacity as Governor of Connecticut, JOSEPH I. LIEBERMAN, in his official capacity as Attorney General of Connecticut, LESTER FORST, in his official capacities as Acting Commissioner of State Police of Connecticut and Commissioner of Public Safety of Connecticut, J. WILLIAM BURNS, in his official capacity as Commissioner of Transportation of Connecticut, BENJAMIN A. MUZIO, in his official capacity as Commissioner of Motor Vehicles of Connecticut,

Appellants

v.

UNITED STATES OF AMERICA, ELIZABETH HANFORD DOLE, Secretary of the Department of Transportation, and R. A. BARNHART, Administrator of the Federal Highway Administration,

Appellees

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

APPELLANTS' REPLY BRIEF

ELLIOT F. GERSON
Deputy Attorney General

HENRY S. COHN
Assistant Atty. General
of Counsel

JOSEPH I. LIEBERMAN
Attorney General
Counsel of Record
30 Trinity Street
Hartford, CT 06106
(203) 566-2026
Counsel for Appellants

Table of Contents Page

Table of Authorities

Cases

In the Supreme Court of the United States
October Term, 1983

No. 83-870
State of Connecticut, Et Al., Appellants
V.
United States of America, Et Al.

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

APPELLANTS' REPLY BRIEF

Appellants make the following reply to the Appellees' Motion to Affirm:

1. The United States contends that the State of Connecticut enacted its Public Act on tandem trailers "in response to the STAA" (at 3). The evidence is quite to the contrary. Connecticut has banned tandems at least since 1930, and probably as early as 1921. Conn.

Gen. Stats. Secs. 1649, 1655 (1930), P.A. 334 (1921) Secs. 16, 22.

Thus it is the federal government that intrudes on an area of state sovereignty where "deference to state regulations" has been so great. Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429, 443 (1978). This intrusion impairs Connecticut's ability to effectively protect its citizenry. National League of Cities v. Usery, 426 U.S. 833, 854-5 (1976).

2. Connecticut, contrary to the United States' claim at 6, has asserted that the STAA will affect the State's ability to "structure integral operations." Hodel v. Virginia Surface Mining & Reclamation Ass'n, Inc., 452 U.S. 286, 288 (1981). The implementation of STAA Sec. 411(c) interfers with Connecticut's genuine and long-standing concern for highway safety. In addition, increased state funds and revenues will be expended as a result of an increased accident rate and greater damage to highways caused by tandems.

Unlike the State of Wisconsin in Raymond, the State of Connecticut has developed in the trial court an uncontroverted record establishing the safety hazards of tandem trucks and the interference of the STAA with state sovereignty.

3. With regard to preemption of Section 3 of the Connecticut Tandem Truck Act (P.A. 83-21), the federal government is "seeking out conflicts between state and federal regulations where none clearly exists." Exxon v. Governor of Maryland, 437 U.S. 117, 120 (1978), citing Huron Cement Co. v. Detroit, 362 U.S. 440 (1960). Section 3(1)(A) specifically states that tandems shall be permitted on all routes "designated by the Commissioner of Transportation pursuant to the [STAA]." Section 3(2)(A) is entirely misread by the federal government. As demonstrated in Appellant's brief at 11, note 13, Section 3(2)(A) does not apply to tandems at all. While Section 3(4) requires a permit for tandems, the sole purpose is to specify the "period, route and any other conditions for which such vehicle may be

operated."

The effect of striking down P.A. 83-21(3) is to eliminate any role for the states in the highway safety process. Even the federal Department of Transportation in its proposed regulations of September 14, 1983 has not gone that far.

Respectfully submitted,

JOSEPH I. LIEBERMAN
ATTORNEY GENERAL

ELLIOT F. GERSON
DEPUTY ATTORNEY GENERAL

Henry S. Cohn
Assistant Attorney
General

(THIS PAGE INTENTIONALLY LEFT BLANK)